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10/718,458	11/19/2003	Billy Huff	Huff	9856

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EXAMINER

CHIN SHUE, ALVIN C

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/718,458

Applicant(s)

HUFF, BILLY

Examiner

Alvin C. Chin-Shue

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 5, 10 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 11-14 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Is the pair of pointed spike members, as set forth in claim 13, different elements from the spike members set forth in claim 11 as suggested?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,6,11 and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lozier et al. Lozier shows a spike assembly 18 including a mounting plate 78 with T-shaped support 42, as set forth in claim 16, a ratchet assembly 25,67, ratchet mounting plate 68 and a strap 12.

Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hebbelinck. Hebbelinck in figs.18 and 22 shows a spike assembly 32,34 with spike members 33, a ratchet assembly 36,121,49, and a strap 1.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lozier et al. in view of Turner. Lozier shows the claimed device with the exception of the hook. Turner shows a hook 66. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Lozier with a hook at the free end of his strap, as taught by Turner, for anchoring the free end of his strap.

Claims 3,4,8,9,13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lozier et al. in view of Dejonghe. Lozier shows the claimed device with the pair of spike members. Dejonghe shows a ground anchor comprising a pair of spike members 11,12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lozier to

comprise a pair of spike members, as taught by Dejonghe, in lieu of his spike assembly 18, to enhance securement of his device.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hebbelinck in view of Sporta. Hebbelinck shows the claimed device in fig.20 with the exception of the ratchet assembly with a strap and hook. Sporta shows a ratchet assembly C having a strap 77 and hook 60. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Hebbelinck with a ratchet assembly having a strap and hook, as taught by Sporta, in lieu of his ratchet assembly 44,45,122,46, by the substituted use of one known equivalent element for another.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hebbelinck in view of Eggleston. Hebbelinck shows the claimed device with the exception the blade. Eggleston shows a spike member with a blade 11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the spike members of Hebbelinck to comprise a blade attachment, as taught by Eggleston, to enhance anchoring.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colglazier et al. in view of Lozier et al. Colglazier shows the claimed device with the exception of the ratchet assembly. Lozier shows a ratchet assembly having a

mounting plate 68, wheel 25 and a strap. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Colglazier to comprise a ratchet assembly, as taught by Lozier, in lieu of his tensioning means 11,14, to facilitate the tensioning of his device.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Colglazier and Lozier as applied to claim 1 above, and further in view of Eggleston as applied above.

Claims 6-9,11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colglazier and Lozier as applied to claim 1 above, and further in view of Meikle. Meikle shows a ground spike member 13 pivotally attached to a spike mounting plate 18. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Colglazier to comprise pivotally attached spike members, as taught by Meikle, in lieu of his integrally attached spike members 6, to his spike mounting plate portions 7 to enable adjustable positioning of his spike members.

This application contains claims directed to the following patentably distinct species of the claimed invention: figs 2 and 2A.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1,2,6 and 7 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.


During a telephone conversation with attorney Crabtree on 11.16.04 a provisional election was made with traverse to prosecute the invention of fig.2, claims 1-4,6-9,11-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5,10 and 15 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin C. Chin-Shue whose telephone number is 703-308-2475. The examiner can normally be reached on Monday-Friday, 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alvin C. Chin-Shue  
Examiner  
Art Unit 3634

ACS